

STATE OF MICHIGAN
COURT OF APPEALS

WALTER LINN and RHEA LINN,

Plaintiffs-Appellants,

v

TOWNSHIP OF ALAIEDON,

Defendant-Appellee.

UNPUBLISHED
September 29, 2000

No. 218359
Tax Tribunal
LC No. 0-234944

Before: Kelly, P.J., and Whitbeck and Collins, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the rehearing decision of the Michigan Tax Tribunal. We affirm.

Plaintiffs are the owners of a four-bedroom home located on five acres in Ingham County's Alaiedon Township. The home was constructed in 1995 and was assessed for the first time in 1996. Plaintiffs protested the assessment amount at both the local board of review and the Small Claims Division of the Michigan Tax Tribunal. Neither the small claims referee nor the Tax Tribunal judge on rehearing adopted the parties' proposed true cash values, but instead made their own determinations of true cash value. The Tax Tribunal ruled that the township had overvalued the true cash value of plaintiffs' home and property for the purpose of real property taxation; however, the tribunal judge did not accept plaintiffs' proposed valuation.

Initially, plaintiffs argue that the Tax Tribunal's finding of the property's true cash value as of December 1995 was in error. "In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong legal principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record." *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992). Failure to base a decision on competent, material, and substantial evidence constitutes an error of law requiring reversal. *Oldenburg*

v Dryden Twp, 198 Mich App 696, 698; 499 NW2d 416 (1993). We conclude that the Tribunal did not err in using the market approach to assessment or finding that plaintiffs had failed to establish that the properties in the area were not uniformly assessed.

The Michigan Constitution provides for the collection of ad valorem taxation of real property at a rate of no more than fifty percent of the property's assessed true cash value. Const 1963, art 9, § 3. Additionally, the taxing unit must take location and other factors into account when assessing the property. MCL 211.27; MSA 7.27. Real property is assessed every year for the purposes of taxation. MCL 211.24; MSA 7.24. A property owner who disagrees with the assessment on a parcel may seek review with the Tax Tribunal after having a request for reduction denied by a local board of review. MCL 205.735(1); MSA 7.650(35)(1).

At both the small claims referee and tribunal judge levels of review, the burden of proof is on the taxpayer to establish the true cash value of the property. MCL 205.737(3); MSA 7.650(37)(3); *Oldenburg, supra* at 698-699. The burden of proof in a tax matter encompasses two concepts: "(1) the burden of persuasion, that does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, that may shift to the opposing party." *Great Lakes Division of National Steel Corp v Ecorse*, 227 Mich App 379, 408-409; 576 NW2d 667 (1998). While the property tax act imposes a burden on the plaintiff to establish a true cash value, it also imposes a duty on the Tax Tribunal to make an independent determination of such value. *Id.* At 410. However, the Tax Tribunal's duty to make its own independent determination of true cash value arises only when the plaintiff has met its burden of going forward with evidence. *Id.* at 410.

Here, the Tribunal did not err in applying the law or adopt a wrong legal principle and its factual findings are supported by competent, material, and substantial evidence on the whole record. *Michigan Bell Telephone Co, supra* at 476. The Tribunal found that plaintiffs had failed to carry their burden of proof to establish the market value of the property. At the Tribunal, defendant presented evidence of three comparable properties within the township, while plaintiffs presented comparables from a subdivision in Delhi Township, in another school district, without making any adjustment for these differences. Further, the township's assessment of the land value was similar to that of plaintiffs' appraiser, whose appraisal greatly exceeded the substitution value plaintiffs placed on their property. The Tribunal's finding of true cash value is supported by the evidence, and the Tribunal did not simply rubber stamp the assessment of the township.

Next, plaintiffs argue that the Tribunal erred in finding that in 1996 the township's average level of assessment was fifty percent of true cash value and that assessments were uniform. Plaintiffs' evidence did not meet their burden of showing a lack of uniformity in the township assessment rates.

The constitutional requirement of uniformity of taxation is concerned with uniformity of rates and assessment. *Harper Creek School Dist v LeRoy Twp Supervisor*, 146 Mich App 515, 532-533; 382 NW2d 172 (1985). Uniformity simply guarantees equality of the tax burden. *Plymouth Twp v Wayne Co Bd of Comm'rs*, 137 Mich App 738, 749; 359 NW2d 547 (1984). "The process of equalization is one by which the county, and then the state, seeks to enforce uniform assessment levels" *Port Sheldon Twp v Ottawa Co Bd of Comm'rs*, 80 Mich App 91, 94-95; 263 NW2d 299

(1977). Intracounty equalization requires that the county determine whether taxing units within the county have equally and uniformly assessed property at fifty percent of true cash value. *Fairplains Twp v Montcalm Co Bd of Comm'rs*, 214 Mich App 365, 369; 542 NW2d 897 (1995). Equalization is not an exact science. *Great Lakes*, *supra* at 427.

“The General Property Tax Act, MCL 211.1 *et seq.*; MSA 7.1 *et seq.*, provides for the yearly assessment and equalization of property for ad valorem tax purposes.” *Fairplains Twp*, *supra* at 367. The burden is on the plaintiff to show that the equalization was inequitable or discriminatory. *Id.* at 372. Here, while plaintiffs presented tables purporting to be an equalization study, they did not provide any information about the equalization study or the properties sampled; therefore, they failed to meet their burden of proof.

Further, the Tribunal did not err in failing to find that the township supervisor's property was assessed at a lower rate than plaintiffs' property. The township presented evidence that plaintiffs were incorrect about the amount the parcel was valued at, and noted that, unlike plaintiffs' property, the township supervisor's property was enrolled in a farmlands program that gave the land a lower tax rate. Plaintiffs presented no evidence that contradicted this explanation.

Finally, plaintiffs argue that the Tribunal erred in failing to rule that defendant committed fraud by intentionally assessing some properties at below fifty percent of true cash value. However, plaintiffs did not specifically argue that the township committed fraud in assessing their property and the Tribunal did not directly address any fraud claim. Therefore, this issue is not preserved for review. In any event, it appears that the Tribunal did not err by failing to find that the township fraudulently assessed township properties.

Intentional overassessment is fraud. *Sloman-Polk Co v Detroit*, 261 Mich 689, 691; 247 NW 95 (1933). A valuation is fraudulent “where it is so unreasonable that the assessor must have known that it was wrong.” *Helin v Grosse Pointe Twp*, 329 Mich 396, 406; 45 NW2d 338 (1951); *Turner v Lansing Twp*, 108 Mich App 103, 111; 310 NW2d 287 (1981), quoting 4 Cooley, Taxation (4th ed), § 1645. A fraudulent valuation may be proven with facts showing that valuation was purposely made too high through prejudice, through the assessor's reckless disregard of duty, or through the adoption of rules that are designed to operate unequally. *Helin*, *supra* at 406-407.

Here, plaintiffs presented no evidence to support an allegation of fraud other than the assessment card of the township supervisor. On its face, this document merely shows the valuation of this official's land. Plaintiffs presented nothing to show that the township assessor was biased in valuing the properties, that the assessor recklessly disregarded his duties, or that the township adopted inequitable rules. The sum total of plaintiffs' evidence was proof that the

township supervisor pays less taxes. This is insufficient under the doctrine of constructive fraud as set forth in *Helin, supra*.

Affirmed.

/s/ Michael J. Kelly

/s/ William C. Whitbeck

/s/ Jeffrey G. Collins